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FEE PAID

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CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIFORNIA (Eastern Division - Riverside)

5 James Hightower (pro)

6 Plaintiff,

7 vs.

8 Kaiser Foundation Health Plan

9 (KFHP) And Their Associates,

10 Executives, Employees, And Assigns.

11 Defendants.

12 } Case No. 5:25-cv-00039-SSS(DTBx)

13 } 1. **Plaintiff Request To Vacate His**
14 } **Voluntary Request For Dismissal**
15 } **With Prejudice And Compel**
16 } **“ALL” Matters And Parties To**
17 } **Arbitration Per Contract.**

I. Nature Of This Case:

14 Rule 60(b) of the Federal Rules of Civil Procedure, gives the courts discretion to
15 set aside a voluntary dismissal with prejudice if the dismissal was not a "free,
16 calculated, and deliberate" choice." *Warfield v. AlliedSignal TBS Holdings, Inc.*, 267
17 F.3d 538, 542 (6th Cir. 2001).¹

18 The Rule also allows a court to revisit final judgments in the interests of justice
19 for the reasons alleged here of fraudulent acts by KFHP for the improper purpose of
20 keeping my claims in ADR No. 18871, court case 5:23-cv-00282-JWH-DTB, and case
21 5:23-cv-01506-JWH-DTB from being resolved by this court and/or arbitrated fairly in
22 violation of my rights as a KFHP member and rights under Section 1983 of the U.S.
23 Code, and the Fifth and Fourteenth Amendments to the U.S. Constitution.

24 Thus, I request this Court **(a)** reverse its decision of granting my "voluntary"
25 request to dismiss case 5:23-cv-00282-JWH-DTB and case 5:23-cv-01506-JWH-DTB
26 and **(b)** compel ALL named parties named as offenders and matters (including those

28 ¹ See Black's Law Dictionary 833 (7th Ed. 1999) (defining "involuntary" as "not resulting from a free and unrestrained
choice; not subject to control by the will.").

1 claims filed in ADR No. 18871) to arbitration. As my seeking dismissal in the
2 alternative “with prejudice” was done so in reliance on the defendants propagating
3 false information, material concealment and/or misrepresentation of facts during the
4 meet and confer conference that “misled” me to take actions of dismissal that I would
5 not have otherwise had had their fraudulent acts not been committed, and therefore the
6 Court’s ruling is invalid under Rule 41(a)(1)(i) and “Rule 60(b) of the Federal Rules of
7 Civil Procedure.

8 **II. Background**

9 **May 2024:** I received A formal copy of my (James Hightower) explanation of
10 benefits from Kaiser Permanente's National Claims Administration Southern California
11 Kaiser Foundation Health Plan, which is attached as **EXHIBIT "A."**

12 **June 6, 2024**, on belief of and in reliance on the information stated in Kaiser’s
13 Explanation of Benefits for James C Hightower—titled “**Binding Arbitration**” —
14 that reads as follows: *If you have ANY claim or dispute that is not governed by the
15 Disputed Claims Process with the U.S. Office of Personnel Management (OPM),
16 then ALL such claims and disputes of any nature between you and the Plan, shall be
17 resolved by binding arbitration, subject to the Plan’s Arbitration procedures.*² I moved
18 and was granted my "voluntary" request to dismiss Federal Court case 5:23-cv-00282-
19 JWH-DTB and case 5:23-cv-01506-JWH-DTB in the alternative “with prejudice” and
20 filed new claims in ADR No. 18871.

22 **8/9/2024**, I discovered KFHP had no intent to honor and/or enforce their
23 “binding arbitration agreement,” as I am advised by counsel Kershaw that I cannot
24 assert any (be it new or old) claims against KFHP’s contracted independent
25 administrator, Ms. Marcella Bell, in ADR No. 18871 because this Court’s order in

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² The U.S. Office of Personnel Management (OPM) serves as the chief human resources agency and personnel policy manager for the Federal Government.

1 5:23-cv-00282-JWH-DTB and Case 5:23-cv-01506-JWH-DTB prevented me from
2 doing so.

3 **12/19/2024:** Moreover, as noted in more detail below. In direct contrast to the
4 KFHP binding arbitration agreement. On Thursday, December 19, 2024, at 11:10 AM,
5 I am advised by Mr. Robert Reese, the assigned arbitrator in ADR No. 1887, that NO
6 party can be mandated to take part in arbitration if they are not a “signatory” to
7 KFHP’s ADR agreement.

8 Thus, it is my belief that the events and revelations noted (after the fact) here
9 warrant dismissal pursuant to Rule 60(b) as it was NEVER my intent to waive my
10 rights under KFHP’s mandatory arbitration policy, California Arbitration Act (CAA,
11 Code Civ. Proc., § 1280 et seq.), the Federal Arbitration Act (“FAA”), and my
12 constitutional rights under Section 1983 of the U.S. Code and the Fifth and Fourteenth
13 Amendments to the U.S. Constitution.

14 And, I would NOT have dismissed court 5:23-cv-00282-JWH-DTB and Case
15 5:23-cv-01506-JWH-DTB (with prejudice) had the true facts and the defendant’s intent
16 been disclosed to me during the meet and confer meeting.

17 **III. Argument to Vacate Dismissal With Prejudice and Compel “ALL” Matters**
18 **and “Parties” to Arbitration Per KFHP’s ADR Agreement Under Rule**
19 **60(b).**

20 First I could find no rule, law, and/or KP policy that affords KFHP the authority to
21 make a unilateral decision to refuse to allow me to name a respondent and/or prevent
22 me from asserting claims against a respondent absent a ruling by the court and/or in
23 arbitration.

24 Second Good cause leads me to allege that KFHP meeting and conferring in “bad
25 faith” caused me to dismiss my claims involuntarily. In that, as noted on June 5 and 6,
26 2024, I met with counsel for both KFHP and Ms. Bell dba the OIA via a preliminary
27 telephone conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure,
28 and at all times relevant:

- 1 • ALL parties acknowledged, asserted no argument to dispute, and/or made
2 known their intent to NOT honor Kaiser's Explanation of Benefits — subsection
3 titled “**Binding Arbitration**” mandating *ANY claim or dispute not governed by*
4 *the Disputed Claims Process with OPM, must be resolved by*
5 *binding arbitration.*
- 6 • ALL parties acknowledged, asserted no argument to dispute, and/or made
7 known their intent to NOT honor Kaisers Evidence of Coverage-section titled
8 “Binding Arbitration” — that reads as follows: *The following description of*
9 *binding arbitration applies to any employee, agent, individual or organization*
10 *whose contract with any of the organizations of Kaiser Permanente requires*
11 *arbitration of claims brought by one or more member Parties* (fn. Omitted)
- 12 • ALL parties acknowledged, asserted no argument to dispute, and/or made
13 known their intent to NOT honor Kaisers Evidence of Coverage-sub-section
14 titled “Scope of arbitration” — that reads as follows: *ANY dispute that arises*
15 *from or is related to an alleged violation of any duty incident to or arising out of*
16 *or relating to this Evidence of Coverage or a Member Party's relationship to*
17 *[Kaiser] irrespective of legal theory, must be decided by binding arbitration*
18 *under California law and not by lawsuit or resort to court process.*
- 19 • ALL parties acknowledged, asserted no argument to dispute, and/or made
20 known their intent to NOT honor KFHP's Evidence of Coverage (EOC) stating
21 that one need only *have a **contract** with any of the organizations of Kaiser*
22 *Permanente to be mandated to resolve dispute via arbitration...*
- 23 • ALL parties acknowledged KFHP's binding ADR agreement, asserted no
24 argument to dispute it, and/or made known their intent to NOT honor KFHP's
25 ADR agreement on the grounds that NO party can be mandated to take part in
26 arbitration if they are not a “signatory” to KFHP's ADR agreement.

- 1 • Moreover, ALL parties acknowledged, asserted no argument to dispute, and/or
2 made known their intent to dispute the fact that KFHP has a “contract” with Ms.
3 Bell to act as the “independent administrator” over KFHP’s mandatory
4 arbitration program.
- 5 • The ONLY disagreement made known to me during the conference (by any party)
6 was that I had taken legal action against Ms. Bell DBA and that Ms. Bell dba has
7 no affiliation with the KFHP mandatory ADR program.
- 8 • In which I advised that my intent was NOT to file new and/or the same claims
9 against Ms. Bell’s dba, but to resolve the disputes against the “independent
10 administrator” who KFHP’s AOB (actually) contracted with to oversee the
11 matters of the KFHP ADR program.
- 12 • However, after the court’s decision and my attempt to assert claims against Ms.
13 Bell in her capacity, not as dba but as the individual “contracted” with KFHP as
14 its independent administrator. I am denied my right to do so.

15 **Third** If not, an act of meeting and conferring in bad faith. There is no genuine
16 dispute of the material fact that KFHP’s false and misleading explanations of *Marcella*
17 *Bell’s contract with the Kaiser Foundation Health Plan Arbitration Oversight Board*
18 *to independently administer the mandatory arbitration process between Kaiser*
19 *Permanente and its members* created coercive conditions that negated my ability to
20 make a free choice in the matter. In that,

- 22 • as noted in a separate document titled *Kaiser Arbitration Oversight Board*
23 *Comments on the Annual Report and the disclosures about OIA Relationships*
24 *with Parties, Lawyers, and Neutral Arbitrators* on the OIA’s website specifically
25 reads: *Marcella Bell has a contract with the Kaiser Foundation Health Plan*
26 *Arbitration Oversight Board to independently administer the mandatory*
27 *arbitration process between Kaiser Permanente and its members.* (See
28 <https://oia-kaiserarb.com/2072/consumer-case-information/oia->

1 disclosures/disclosures-about-oia-relationships-with-parties-lawyers-and-
2 neutral-arbitrators)

3 • This fact is also affirmed in Annual Report Of The Office Of The Independent
4 Administrator Of The Kaiser Foundation Health Plan, Inc. Mandatory
5 Arbitration System for Disputes With Health Plan Members January 1, 2023 -
6 December 31, 2023 - section titled "Introduction & Overview" — that reads as
7 follows: Marcella A. Bell, an attorney, is the Independent Administrator. Under
8 her contract with the Arbitration Oversight Board.³

9
10 Thus, my claims against Ms. Bell as independent administrator are NOT an
11 exception to the rule and/or not barred from arbitration, as the "claims" alleged are in
12 relation to a party "contracted" by KFHP taking actions to my deny my rights,
13 privileges, and coverage as a KFHP member.

14 Moreover, as a result of the above. There is no genuine dispute of material fact
15 that my seeking dismissal in the alternative "with prejudice" was done so under the
16 duress caused by the behavior of the defendants and/or their acts noted herewith that
17 created coercive conditions that negated my ability to make a free choice in the matter.

18 **IV. Binding ADR Agreement Relied On Reverse The Court's Decision And**
19 **Compel "ALL" Matters And Parties To Arbitration Per KFHP's ADR**
20 **Agreement Under Rule 60(B) Motion**

21 Good cause leads me to allege that all matters, named parties in ADR No. 18871
22 and Federal court case 5:23-cv-00282-JWH-DTB and case 5:23-cv-01506-JWH-DTB
23 should be mandated to KFHP ADR program. In that,

24 **First** KFHP's Explanation of Benefits for James C Hightower—titled "Binding
25 Arbitration" — mandates: *If you have ANY claim or dispute that is not governed by*
26 *the Disputed Claims Process with OPM, then ALL such claims and disputes of any*

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28 ³ <https://oia-kaiseralb.com/2072/consumer-case-information/oia-disclosures/disclosures-about-oia-relationships-with-parties-lawyers-and-neutral-arbitrators>.

1 *nature between you and the Plan, shall be resolved by binding arbitration, subject to*
2 *the Plan's Arbitration procedures (Fn. omitted.)*⁴

3 **Second** See also KFHP's evidence of Coverage-section titled "Binding Arbitration"
4 that states *binding arbitration applies to any employee, agent, individual or*
5 *organization whose contract with any of the organizations of Kaiser Permanente*
6 *requires arbitration of claims brought by one or more member Parties* (fn. Omitted).

7 **Third** As well as Kaisers Evidence of Coverage-sub-section titled "Scope of
8 arbitration" stating *ANY dispute that arises from or is related to an alleged violation of*
9 *any duty incident to or arising out of or relating to this Evidence of Coverage or a*
10 *Member Party's relationship to [Kaiser] irrespective of legal theory, must be decided*
11 *by binding arbitration under California law and not by lawsuit or resort to court*
12 *process.*

13 **Fourth** Additionally, to avoid being in violation of Health and Safety Code section
14 1363.1. Accepting the terms of arbitration by [KFHP] and [KPIC] is a "condition" of
15 enrollment to ensure KFHP members were aware of it validity.⁵

16 **Fifth** And again, by law, a party seeking to compel arbitration meets their initial
17 burden of establishing the existence of a valid arbitration agreement by attaching a
18 copy to the motion or petition to compel arbitration. (See Exhibit "A")

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20 **V. Applicable Laws Relied On To Vacate Dismissal With Prejudice And**
21 **Compel "ALL" Matters And Parties To Arbitration Per KFHP's ADR**
22 **Agreement Under Rule 60(B) Motion.**

23 **First** In reliance on Ms. Bell (solely) appearing as Marcella A. Bell dba the Office
24 of the Independent Administrator (the "OIA") pursuant to 28 U.S.C. § 133.⁶ And my

25 ⁴ A party seeking to compel arbitration meets their initial burden of establishing the existence of a valid arbitration
26 agreement by attaching a copy to the motion or petition to compel arbitration. (*Espejo v. Southern California Permanente*
27 *Medical Group* (2016) 246 Cal.App.4th 1047, 1060 (*Espejo*)).

28 ⁵ *Malek v. Blue Cross of California*(2004) 121 Cal.App.4th 44, 50.

⁶ See defendants opposition to Motion (the "Bell/OIA Opposition") [ECF No. 127] Page 2, ¶ 1 ("this case should be
28 dismissed against Defendant MARCELLA A. BELL DBA THE OFFICE OF THE INDEPENDENT ADMINISTRATOR
(the "OIA") with prejudice")

1 claims in ADR No. 18871 against the “independent administrator” contacted by
2 KFHP’s AOB. I have the right to have my claims against KFHP’s independent
3 administrator decided by the arbitrator in KFHP’s mandatory ADR program, as Ms.
4 Bell steadfastly denied the fact that she was the “administrator” contracted by KFHP
5 to oversee ADR.

6 **Second** In reliance on my claims filed in ADR NOT being a request and/or a form of
7 relief to resolve the matters in the court actions I “voluntary” dismissed with prejudice
8 (id). Pursuant to KFHP healthcare contract. The NEW claims I asserted against ALL
9 named respondents must be decided by the arbitrator in KFHP’s mandatory ADR
10 program and not the court.⁷

11 **Third** In reliance on the fact that the matters of KFHP’s mandatory ADR agreement
12 was NEVER addressed by the court and the court NEVER made an order/ruling
13 stating that KFHP’s mandatory ADR agreement was not a valid object dictating the
14 matters of arbitration for KFHP members.⁸ I have the right to have my claims asserted
15 in my complaint and FAAD decided by the arbitrator in KFHP’s mandatory ADR
16 program.

17 **Fourth** In reliance on the claims, I asserted in the demand for arbitration and First
18 Amended Demand for Arbitration (FAAD) being not yet ripe for litigation when the
19 court granted my (voluntary) request for dismissal with prejudice on 7/8/2024,
20 because I did not discover the respondents acts of healthcare fraud in ADR No. 17662
21 until **“AFTER”** federal Court case 5:23-cv-00282-JWH-DTB, or Case 5:23-cv-
22 01506-JWH-DTB were dismissed with prejudice.⁹ I have the right to have my claims
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24
25 ⁷ Courts have jurisdiction over matters in arbitration, but the U.S. Supreme Court has adopted a restrictive view of federal
jurisdiction to review an arbitrator’s award under the Federal Arbitration Act.

26 ⁸ On January 8, 2019, the U.S. Supreme Court in *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. ___ (2019)
(Slip Op.), unanimously held that a federal court cannot decide whether a contract’s arbitration clause applies to a dispute
if the contract gives that authority to an arbitrator – even when the argument for arbitration is “wholly groundless.”

27
28 ⁹ As this Court has held, unripe claims cannot later serve as a basis for res judicata. *Rawe v. Liberty Mut. Fire Ins. Co.*,
462 F.3d 521, 529–30 (6th Cir. 2006).

1 asserted in my complaint and FAAD decided by the arbitrator in KFHP's mandatory
2 ADR program.

3 **Fifth** My assertion of the NEW facts should result in vacatur of my voluntarily
4 dismissal with prejudice as there is NO procedure in this instance that I could have
5 relied on to amend the pleading in court, as my discovery and assertion of NEW claim
6 arose out of KFH's MSJ submitted to the arbitrator. Thus, outside of the court's
7 jurisdiction.

8 **Sixth** Moreover, as I understand the law. I have a right to seek damages where new
9 events cause further harm and/or denied rights. In that, as the Supreme Court
10 explained more than 50 years ago in *Lawlor v. National Screen Service Corp.*, 349
11 U.S. 322 (1955), *res judicata* does not bar a suit, even if it involves the same course of
12 wrongful conduct as alleged earlier, so long as the suit alleges new facts or a
13 worsening of the earlier conditions

14 **Seventh** It is an indisputable violation of my rights under KFHP's mandatory
15 arbitration agreement, the California Arbitration Act (CAA, Code Civ. Proc., § 1280 et
16 seq.), the Federal Arbitration Act ("FAA"), and my constitutional rights under Section
17 1983 of the U.S. Code and the Fifth and Fourteenth Amendments to the U.S.
18 Constitution to "unilaterally" dismiss and/or prevent me from naming a party
19 contracted by KFHP as a respondent in my demand for arbitration without due process
20 of the law.¹⁰

21 **Eighth** Furthermore, California has a strong public policy in favor of arbitration and
22 any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration.
23 (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677,
24 686.). This strong policy has resulted in the general rule that arbitration should be
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28 ¹⁰ See also California Code, CONS SEC. 7. - California Legislative Information(a) A person may not be deprived of life,
liberty, or property without due process of law or denied equal protection of the laws...

1 upheld unless it can be said with assurance that an arbitration clause is not susceptible
2 to an interpretation covering the asserted dispute. (*Ibid.* [internal quotations omitted].)

3 **Ninth** This rule is also in accordance with the liberal federal policy favoring
4 arbitration agreements under the Federal Arbitration Act (FAA”), which governs all
5 agreements to arbitrate in contracts involving interstate commerce. (9 U.S.C. § 2, *et*
6 *seq.*; *Higgins v. Superior Court* (2006) 140 Cal.App.4th 1238, 1247.)

7 **VI. Good Cause Leads Me To Allege That The Court’s Decision Should Be**
8 **Reversed, As I Exhausted Every Possible Remedy In Efforts To Resolve**
9 **This Dispute In Arbitration And Not File This Matter In Court.**

10 Perplexed by KFHP’s independent administrator believing that they had the
11 authority to breach KFHP ADR agreement and/or dictate who I could and could not
12 name as a respondent in arbitration absent a ruling by the arbitrator.

13 **First** Via email. On or about **8/9/2024**: I requested the defendants et al. explain how
14 and/or why my “binding arbitration agreement” with KFHP ONLY applies to **(a)** the
15 executives, employees, and their assigns of SCPMG (Southern California Permanente
16 Group), a “third party” contracted with KFHP to provide health care to KFHP
17 members, and/or **(b)** the executives, employees, and their assigns of KFH (Kaiser
18 Foundation Hospital), a “third party” contacted with KFHP to operate its healthcare
19 facilities and hospitals but does NOT apply to **(c)** KFHP’s “independent
20 administrator,” a “third party” contacted with KFHP AOB to oversee the matters of
21 KFHP’s arbitration program. However, as the date of this filing, I have yet to receive a
22 response.

23 **Second** On **Aug 6, 2024**, at 01:03:20 PM (Case ID: 75363223) I contacted KFHP’s
24 Grievance Dept. and requested that they “reaffirm” my rights as a KFHP member to
25 pursue arbitration against the entities “contracted” by KFHP to provide services for
26 KFHP members, and/or resolve my misunderstanding of the agreement. However, as
27 the date of this filing, I have yet to receive a response.

1 **Third** On Aug 9, 2024, at 04:41:15 AM (Case ID: 75411127); I (again) contacted
2 KFHP's Grievance Dept. and requested that they "reaffirm" my rights as a KFHP
3 member to pursue arbitration against the entities "contracted" by KFHP to provide
4 services for KFHP members, and/or resolve my misunderstanding of the agreement.
5 However, as the date of this filing, I have yet to receive a response.

6 **Fourth** On Oct 15, 2024, at 09:04:13 AM (Case ID: 76491093). Having no response
7 to the aforementioned complaints. I once again, contacted KFHP's Grievance Dept.
8 and requested that they "reaffirm" my rights as a KFHP member to pursue arbitration
9 against the entities "contracted" by KFHP to provide services for KFHP members,
10 and/or resolve my misunderstanding of the agreement. However, as the date of this
11 filing, I have yet to receive a response.

12 **Fifth** On Sept 4, 2024, after receiving no response to my complaint No. 75363223
13 and 75363223. I called KFHP member services for an update, and while I was able to
14 reaffirm my concerns. However, as the date of this filing, I have yet to receive a
15 response, and/or receive a call back.

16 **Sixth** On Tue 11/19/2024 8:27 PM via email, Mon 11/25/2024, 9:00 AM via email,
17 In hopes that this had all been a misunderstanding. I contacted the executives of
18 KFHP and the various attorneys requesting the attorneys identify who is representing
19 who, and I received no response.

21 **Seventh** On or about Wed 11/27/2024 12:56 PM: I attempted to resolve this matter
22 via the neutral arbitrator selected to arbitrate the matters of Arb. #18871 (Mr. Robert
23 Rees) of KFHP's independent administrator. However, despite receiving a bill from
24 Mr. Reese for 1,850.00 (One thousand Eight Hundred fifty Dollars and no cents). Mr.
25 Reese stated he has no authority to force "non-signatories" to KFHP's ADR agreement
26 to arbitration. Thus, I (reluctantly) dismissed ADR case 18871 "without prejudice" to
27 resolve the dispute via the court.

1 **Eighth** Moreover, on **Nov 25, 2024**, at 08:54:51 AM (Case ID: 76994981): To
2 ensure that I exhausted every avenue to avoid filing this matter with the court. I
3 submitted one last “warning” to KFHP’s Grievance Dept. of my intent to file a new
4 claim in court seeking clarity of the court’s order if they did not respond to the
5 aforementioned emails and my “official” grievances, and hereto, as of the date of this
6 filing, I have yet to receive a formal response.

7 **VII. Request For Damages**

9 **First Claim For Relief:**

10 • By this reference, I James Hightower, the PLAINTIFF hereby incorporates each
11 and every paragraph set forth above as though fully set forth at this place.

12 • I HEREBY accuse the executives, employees of KFHP, and the independent
13 administrator assigned (contracted) with KFHP to conduct ADR for KFHP
14 members (collectively the defendants) of knowingly, intentionally, and
15 maliciously engaging in acts of unethical business practices (healthcare fraud)
16 with intent to violate my rights as a KFHP member, constitutional rights under
17 Section 1983 of the U.S. Code, and the Fifth and Fourteenth Amendments to the
18 U.S. Constitution to keep my claims from being arbitrated.

19 • The defendants were acting or purporting to act in the performance of their
20 official duties.

22 • The defendants knew their actions were in violation of my rights under
23 KFHP’s policy, KFHP’s mandatory arbitration policy, California Arbitration
24 Act (CAA, Code Civ. Proc., § 1280 et seq.), the Federal Arbitration Act
25 (“FAA”), and my constitutional rights under Section 1983 of the U.S. Code
26 and the Fifth and Fourteenth Amendments to the U.S. Constitution....and
27 intentionally violated said rules and laws for the improper purpose of
28 preventing my claims from being arbitrated. (healthcare fraud)

- 1 • The defendants knew their representation were false, misleading and
2 intentionally provided the false and misleading information to the court, the
3 arbitrator and I for the improper purpose of preventing my claims from being
4 arbitrated.
- 5 • The defendants misrepresentation, abuse of their authority, and dereliction of
6 their duties were material to my dismissing the case with prejudice in court,
7 staying the new claims filed in ADR, and refiling the matters back in court
8 seeking resolution.
- 9 • The defendants committed their actions with malicious intent and made their
10 misrepresentations with malice (knowledge that the statement was false or
11 reckless disregard for its veracity).
- 12 • Their representations was made with the intention that I rely on it and dismiss
13 my case in federal court and/or to prevent my claims from being arbitrated.
- 14 • I actually relied on the misrepresentation of the defendants and would not
15 have otherwise had I known the truth and/or the aforementioned events not
16 occurred.
- 17 • The defendants conduct violated my right to bring suits for the "deprivation of
18 my rights, privileges, and/or immunities secured by KFHP's healthcare
19 contract, the Constitution and federal and state laws.
- 20 • The defendant's conduct meets the essential elements of healthcare fraud with
21 intent to cover up their fraudulent business practices by preventing the claims
22 from being arbitrated and/or appealing the arbitrator's decision before the
23 court.
- 24 • As a result, not only was I harmed by the defendant's acts that denied my
25 rights as a KFHP member, but I was also harmed as the defendant's actions
26 violated my rights under Section 1983 of the U.S. Code and my constitutional
27 rights under the Fifth and Fourteenth Amendments to the U.S. Constitution.

1 **Prayer for Relief**

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- If not a ruling of “default judgment” by the court against KFHP et al. due to their intentional failure to defend against the claim I asserted against them in arbitration No. 18871, court case 5:23-cv-00282-JWH-DTB and case 5:23-cv-01506-JWH-DTB.
- In reliance on Fed.R.Civ.P. 60(b)(4) and Fed.R.Civ.P. 60(b)(6). I request a reversal of the court’s decision dismissing Federal Court case 5:23-cv-00282-JWH-DTB and case 5:23-cv-01506-JWH-DTB with prejudice and granting my request to dismiss the matters “**without prejudice**,” as my seeking dismissal in the alternative “**with prejudice**” was done so under the duress caused by the behavior of the defendants acts noted herewith that created coercive conditions that negated my ability to act on my own free will.
- In reliance on KFHP’s arbitration agreement, California Arbitration Act (CAA, Code Civ. Proc., § 1280 et seq.), and the Federal Arbitration Act (“FAA”). I request **this Court enter an order “compelling the parties to arbitration”** to resolve the underlying complaints in Federal Court case 5:23-cv-00282-JWH-DTB and case 5:23-cv-01506-JWH-DTB and my FAAD filed in ADR No. 18871, as KFHP’s Binding Arbitration agreement specifically states: *If you have ANY claim or dispute that is not governed by the Disputed Claims Process with OPM, then ALL such claims and disputes of any nature between you and the Plan shall be resolved by binding arbitration, subject to the Plan’s Arbitration procedures (Fn. omitted.).*

25 January 6, 2025

James Hightower

James Hightower (pro per Plaintiff)
29142 Hidden Meadow Dr.
Menifee, CA 92584

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4 **EXHIBIT “A”**

5 **Kaiser Foundation Health Plan, Inc Explanation Of Benefits**
6 **For James C Hightower**

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KAISER FOUNDATION HEALTH PLAN, INC
PO Box 629028
El Dorado Hills, CA 95762-9028

James C Hightower
29142 HIDDEN MEADOW DR
MENIFEE, CA 92584-7021

This is not a bill

If you owe anything, you'll get a bill.

This Explanation of Benefits is a summary of services you've received. It shows the charges, the date of your visit, and the name of the provider you visited. Use it to:

- **Keep track of your expenses** and make sure everything is accurate. ***
- **Check your progress** – have you reached your deductible or out-of-pocket maximum? ***
- To reduce clutter and get your next EOB online, sign up at kp.org/choosepaperless.

Call us if you have questions

Weekdays 8:00 am – 5:00 pm (Pacific Time)

1-800-390-3510 or TTY: 711

kp.org

Track your care

Medical record number: [REDACTED] 9

Group identification: [REDACTED]

Plan type: HMO - HMO COMMERCIAL-HMO

Account Holder Name and Identification: [REDACTED]

Plan year: 01/01/2024 through 12/31/2024

Membership Relationship to Subscriber: Spouse

Explanation of Benefits for James C Hightower

Here's a snapshot of your share of the charges for the services you've received.

November 12, 2024

\$0.00

Your share

Binding Arbitration

Except for Small Claims Court cases and disputes governed by the Disputed Claims Process with OPM described in Section 8 of your FEHBP Brochure, any dispute between members, their heirs, or associated parties (on the one hand) and Plan, its health care providers, or other associated parties (on the other hand) for alleged violation of any duty arising out of or related to your Plan membership, must be decided by binding arbitration under California law and not by lawsuit or resort to court process, except as applicable law provides for judicial review of arbitration proceedings. This includes, for example, claims for medical or hospital malpractice or for premises liability, irrespective of legal theory. Both sides give up all rights to a jury or court trial, and both sides are responsible for certain costs associated with binding arbitration. For information that describes the arbitration process, contact our **Member Service Call Center at 1-800-464-4000** for copies of our requirements. These will explain how you can begin the binding arbitration process.

Should you have any questions regarding this notice, please contact **Member Services at 1-800-464-4000 or (TTY) 711.**